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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,924	02/04/2004	Behnam Pourdeyhimi	297/168/2	3493
25297	7590	08/10/2004	EXAMINER	
JENKINS & WILSON, PA 3100 TOWER BLVD SUITE 1400 DURHAM, NC 27707			LONEY, DONALD J	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	d
	10/771,924	POURDEYHIMI ET AL.	
	Examiner Donald Loney	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-47 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3,6,7,8,13,21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Watkins et al (5165979).

Watkins teaches a three dimensional (i.e. containing projections) non-woven wherein polypropylene fibers of 1 micron to 100 microns are disclosed. Refer to column1, lines 51-64, column 2, lines 26-50 and column 4, lines 36-38.

3. Claims 1-3,6,7,8,13,17,21,23,25-27,30,31,32,44 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Daponte (4863779).

Daponte teaches a three dimensional (i.e. containing projections) non-woven wherein polypropylene fibers having a diameter of less than 200 microns, preferably .5 to 50 microns are used. The non woven can be attached to another woven layer as recited in instant claim 25. Claim 25 is interpreted by the examiner as being a composite formed of two networks, one being wovens, knits or braids as in lines 4 and 5 and a second one being of non wovens as recited in line 7, both networks being formed of fibers of less than 100 microns. Refer to figure 2A showing projections 16a and 20a along with column 3 line 8 through column 4, line 61, column 5, lines 48-60 (for the

other woven layer in claim 25 as specified above), column 7, lines 42-65 column 16, lines 29-42, and column 20, lines 58-66.

4. Claims 1-8,10,1213,21,23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Englebert et al (4741941).

Englebert et al teaches a fibrous network formed of the recited fibers having a size of 1 to 100 microns. The three dimensional network can have truncated cones (figure 3 and 10) of height .3mm to 25mm. Refer to column 2, lines 46-60, column 4, line 62 through column 5, line 2 and column 6, lines 2-9,40-44.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8,12,15,21 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kin et al (5731062).

Kin et al discloses a fiber network formed of poly ethylene terephthalate (PET) fibers of a diameter of at least about .1mm (100 microns). The examiner deems this appears to overlap the applicant's range of less than one 100 microns with sufficient specificity that a 102 rejection would be appropriate. A prima facie case of obviousness also exists if the ranges overlap and it would have been obvious to use smaller sized fibers in order to form a softer three dimensional network. See column 2, lines 63-65 in

Daponte 4863779, as a teaching reference to the fact that it is known to use the smaller fibers in order to form a softer, cloth like material therefrom.

7. Claims 4,5,9-12,14-16,18-20,22,24,28,29,33-43,45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daponte in view of Kim et al.

Deponce teaches the invention substantially as recited except for the use of PET for the fibers and the size of the projections.

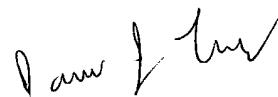
Kim et al teaches to use PET fibers and that the size of the fibers and projections can be chosen to give the desired cushioning properties for a specific application. Refer to column 5 lines 41-66.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary reference to use PET fibers of the size recited and to form the projections of whatever shape and/or size is desired in order to conform the article to its desired application motivated by the fact the Kim et al teaches that these features can be chosen to give desired cushioning properties to the article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon-Fri. 8AM-4PM, maxi-flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald Loney  
Primary Examiner  
Art Unit 1772

DJL;D.Loney  
08/06/04